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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION
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12 JOANNE ROMAN, Individually and on
behalf of the estate of Michael T. Roman,
13 Deceased

14 Plaintiff,

15 v.

16 UNITED STATES OF AMERICA,

17 Defendant.

No. C 04-3239 CW

STIPULATION AND ~~PROPOSED~~
ORDER APPROVING COMPROMISE
SETTLEMENT

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STIPULATION AND [PROPOSED] ORDER APPROVING COMPROMISE SETTLEMENT
C 04-3239 CW

IT IS HEREBY STIPULATED by and between Plaintiff Joanne Roman (individually and on behalf of the estate of Michael T. Roman) and Defendant United States of America, by and through their respective attorneys, as follows:

1. The parties do hereby agree to settle and compromise the above-entitled action under the terms and conditions set forth herein.

2. Defendant United States of America agrees to pay to Plaintiff Joanne Roman the sum of one hundred thirty five thousand ^{dollars} and no cents (\$135,000.00), which sum shall be in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen wrongful death, bodily and personal injuries, damage to property and the consequences thereof, resulting, and to result, from the same subject matter that gave rise to the above-captioned lawsuit, for which Plaintiff or her heirs, executors, administrators, or assigns, and each of them, now have or may hereafter acquire against the United States of America, its agencies, agents, servants, and employees.

3. Plaintiff and her heirs, executors, administrators or assigns hereby agree to accept the sum listed in paragraph 2 in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen wrongful death, bodily and personal injuries, damage to property and the consequences thereof which she may have or hereafter acquire against the United States of America, its agencies, agents, servants and employees on account of the same subject matter that gave rise to the above-captioned lawsuit. Plaintiff and her heirs, executors, administrators or assigns further agree to reimburse, indemnify and hold harmless the United States of America, its agencies, agents, servants or employees from any and all such causes of action, claims, liens, rights, or subrogated or contribution interests incident to or resulting from further litigation or the prosecution of claims by Plaintiff or her heirs, executors, administrators or assigns, or the heirs or the adult children of Michael Roman (decedent), against any third party or against the United States, including claims for wrongful death.

4. This stipulation for compromise settlement shall not constitute an admission of STIPULATION AND [PROPOSED] ORDER APPROVING COMPROMISE SETTLEMENT
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liability or fault on the part of the United States, its agencies, agents, servants, or employees, and is entered into by the parties for the purpose of compromising disputed claims and avoiding the expenses and risks of litigation.

5. This Agreement may be pled as a full and complete defense to any subsequent action or other proceeding involving any person or party which arises out of the claims released and discharged by the Agreement.

6. It is also agreed, by and among the parties, that the settlement amount of one hundred thirty five thousand Dollars and no cents (\$ 135,000.00) to Joanne Roman represents the entire amount of the compromise settlement and that the respective parties will each bear their own costs, fees, and expenses and that any attorneys' fees owed by Plaintiff will be paid out of the settlement amount and not in addition thereto.

7. It is also understood by and among the parties that, pursuant to Title 28, United States Code, Section 2678, attorneys' fees for services rendered in connection with this action shall not exceed 25 percent of the amount of the compromise settlement.

8. Payment of the settlement amount will be made by a check drawn on the United States Treasury for one hundred thirty five thousand Dollars and no cents (\$ 135,000.00) and made payable to Joanne Roman and the law office of Rawls & McNelis.

9. In consideration of this Agreement and the payment of the foregoing amount thereunder, Plaintiff agrees that upon notification that the settlement check is ready for delivery, she will deliver to Defendant's counsel a fully executed Notice of Dismissal with prejudice of Joanne Roman v. United States of America, C 04-3239 CW. Upon delivery of the Notice of Dismissal, Defendant's counsel will release the settlement check to Plaintiff's counsel or his agent.

10. Plaintiff has been informed that payment may take sixty days or more to process, but Defendant agrees to make good faith efforts to expeditiously process said payment.

11. The parties agree that should any dispute arise with respect to the implementation of the terms of this Agreement, Plaintiff shall not seek to rescind the Agreement and pursue her original causes of action. Plaintiff's sole remedy in such a dispute is an action to enforce the STIPULATION AND [PROPOSED] ORDER APPROVING COMPROMISE SETTLEMENT C 04-3239 CW

1 Agreement in district court. The parties agree that the district court will retain jurisdiction over
2 this matter for the purposes of resolving any dispute alleging a breach of this Agreement.

3 12. Plaintiff hereby releases and forever discharges the United States and any and all
4 of its past and present officials, employees, agencies, agents, attorneys, their successors and
5 assigns, from any and all obligations, damages, liabilities, actions, causes of action, claims and
6 demands of any kind and nature whatsoever, whether suspected or unsuspected, at law or in
7 equity, known or unknown, arising out of the allegations set forth in Plaintiff's pleadings in this
8 action.

9 13. The provisions of California Civil Code Section 1542 are set forth below:

10 "A general release does not extend to claims which the creditor does not know or
11 suspect to exist in his favor at the time of executing the release, which if known
by him must have materially affected his settlement with the debtor."

12 Plaintiff having been apprised of the statutory language of Civil Code Section 1542 by her
13 attorneys, and fully understanding the same, nevertheless elects to waive the benefits of any and
14 all rights she may have pursuant to the provision of that statute and any similar provision of
15 federal law. Plaintiff understands that, if the facts concerning Plaintiff's injuries and the liability
16 of the government for damages pertaining thereto are found hereinafter to be other than or
17 different from the facts now believed by them to be true, the Agreement shall be and remain
18 effective notwithstanding such material difference.

19 14. This instrument shall constitute the entire Agreement between the parties, and it is
20 expressly understood and agreed that the Agreement has been freely and voluntarily entered into
21 by the parties hereto with the advice of counsel, who have explained the legal effect of this
22 Agreement. The parties further acknowledge that no warranties or representations have been

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made on any subject other than as set forth in this Agreement. This Agreement may not be altered, modified or otherwise changed in any respect except by writing, duly executed by all of the parties or their authorized representatives.

Dated: August 18, 2005


JOANN ROMAN
Plaintiff


Dated: August 18, 2005

RAWLS & McNELIS

JOSEPH P. CALLAHAN
Attorney for Plaintiff Joanne Roman

Dated: August 18, 2005

KEVIN V. RYAN
United States Attorney


CHINHAYT J. COLEMAN
Assistant United States Attorney


[PROPOSED] ORDER

STAFF ATTORNEY, U.S. REGIONAL COUNSEL

APPROVED AND SO ORDERED.

Dated: 8/30/05
/s/ CLAUDIA WILKEN

CLAUDIA WILKEN
United States District Judge

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